

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

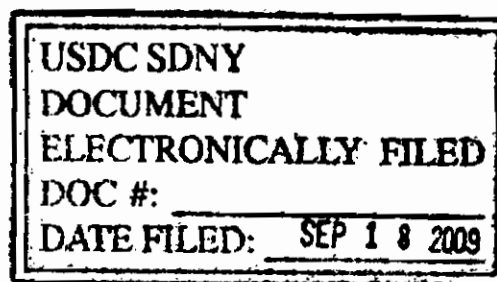
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DAVID FLOWERS,

Petitioner,

-v-

ROBERT ERCOLE, Superintendent,

Respondent.  
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No. 06 Civ. 6118 (LTS)(FM)

**MEMORANDUM OPINION AND ORDER ADOPTING**  
**REPORT AND RECOMMENDATION**

Petitioner David Flowers ("Petitioner") commenced this action on August 11, 2006, by filing a timely Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his conviction in Supreme Court, New York County, on one count of robbery in the first degree, as well as his sentence as a persistent violent felon to a prison term of twenty years to life. (Docket entry no. 1.) The case was assigned to the undersigned and referred to Magistrate Judge Frank Maas, who stayed the action pending Petitioner's pursuit of collateral relief in New York State court. Upon the exhaustion of his state court remedies, Petitioner, pursuant to Judge Maas' order (docket entry no. 4), filed an Amended Petition for Writ of Habeas Corpus. (Docket entry no. 6.) The Government submitted an opposition to the Petition (docket entry nos. 11, 12) to which Petitioner did not submit a reply, despite having received an enlargement of time to do so. Judge Maas issued a Report and Recommendation, dated November 25, 2008 (the "Report"), which recommends that the Petition should be denied and Petitioner should be denied a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2). (Docket entry no. 14.) Petitioner again sought

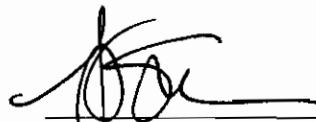
and received an enlargement of time to file a responsive submission (objections pursuant to Rule 72(b) of the Federal Rules of Civil Procedure) (docket entry no. 15) but failed to make a submission, and the time allotted to do so has expired.

The Court has thoroughly reviewed the Amended Petition, the Government's opposition submission and the Report. When reviewing the Report, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C.A. § 636(b)(1)(C) (West 2008). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." See Pearson-Fraser v. Bell Atl., No. 01 Civ. 2343, 2003 WL 43367, at \*1 (S.D.N.Y. Jan. 6, 2003) (internal citations and quotation marks omitted). Judge Maas' 44-page Report reflects a thorough review of the record and a diligent analysis of the applicable law. The Court is satisfied that the report contains no clear error. Accordingly, the Court adopts the Report in its entirety.

CONCLUSION

The Petition is hereby denied and the Petitioner is denied a certificate of appealability pursuant to 28 U.S.C. § 2253(c)(2). The Clerk of Court is hereby requested to enter judgment accordingly and close this case.

Dated: New York, New York  
September 18, 2009

  
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LAURA TAYLOR SWAIN  
United States District Judge